SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC 2002-000667 09/30/2003

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED:_____

STATE OF ARIZONA ROGER KEVIN HAYS

v.

JASON D LAWSON JOHN P TATZ

MESA CITY COURT
REMAND DESK-LCA-CCC

MINUTE ENTRY

MESA CITY COURT

Cit. No. #825396

Charge: 1. DRIVING WHILE UNDER THE INFLUENCE OF ALCOHOL
2. HAVING A BAC .08 OR WITHIN 2 HRS

DOB: 08/10/77

DOC: 08/16/02

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This case has been under advisement since oral argument on August 29, 2003. This Court has considered and reviewed the record of the proceedings from the Mesa City Court, exhibits made of record, and the memoranda and oral arguments of counsel.

The only issue raised by the Appellant is his assertion that the trial court erred, as a matter of law, in denying his Motion to Suppress Evidence claimed to be in violation of Appellant's Fourth Amendment Constitutional Rights. Appellant, Jason D. Lawson, was

arrested on August 16, 2002 at his home and charged with the crime of Driving While Under the Influence of Intoxicating Liquor, a class 1 misdemeanor offense in violation of A.R.S. 28-1381(A)(1), and Driving With a Blood Alcohol Content Greater than .08, also a class 1 misdemeanor offense, in violation of A.R.S. Section 28-1381(A)(2). Appellant filed a Motion to Suppress which was heard by the trial court at an evidentiary hearing held November 18, 2002. At the hearing, Mesa Police Officer James Boubelik, testified that he was driving his police motorcycle within the City of Mesa when he saw an automobile (later found to be driven by the Appellant) exit a gas station at a high speed. The officer pursued Appellant's vehicle observing numerous traffic violations and a speed of approximately 60 miles per hour.[1] Eventually, Appellant's vehicle turned into a residential area, and as Appellant quickly turned into a driveway, the officer turned on his lights to stop Appellant's vehicle.[2] The officer observed that the garage door was up and that Appellant's car drove directly into the garage.[3] The officer then immediately dismounted his police motorcycle and walked into the open garage, ordered Appellant out of the vehicle, and handcuffed Appellant in the garage while Appellant was standing next to his automobile.[4] No other witnesses testified. At the conclusion of the hearing, the trial court found that Appellant did have an expectation of privacy in the open garage, but that exigent circumstances justified the warrantless entry of Officer Boubelik into the garage to arrest Appellant. The trial judge then denied Appellant's Motion to Suppress.[5]

Appellate courts review trial courts' rulings on Motions to Suppress Evidence for clear and manifest error.[6] And, mixed questions of law and fact which involve constitutional rights and issues are reviewed by an appellate court *de novo*.[7]

In this case, the trial judge's legal conclusion that exigent circumstances warranted the warrantless intrusion by Mesa Police Officer Boubelik into Appellant's garage is not tenable. The law in Arizona is clear that warrantless entries into dwellings (homes) to effect an arrest are *per se* unreasonable unless there are exigent circumstances that require the police to act before a warrant can be obtained.[8] The Arizona Supreme Court has recognized the following six exigent circumstances:

(1) Response to an emergency;
(2) Hot pursuit;
(3) Probability of destruction of evidence;
(4) The possibility of violence;
(5) Knowledge that a suspect is fleeing or attempting to flee; and

[1] R.T. of November 18, 2002, at pages 3-5.
[2] Id. at pages 5-6.
[3] Id.
[4] Id.
[5] Id., at pages 19-21.
[6] State v. Soto, 195 Ariz. 429, 990 P.2d 23 (App. 1999).
[7] Id.; State v. Hackman, 189 Ariz. 505, 943 P.2d 865 (App. 1997).
[8] State v. Gissendaner, 177 Ariz. 81, 83, 865 P.2d 125, 127 (App. 1994), citing State v. Greene, 162 Ariz. 431, 784 P.2d 256 (1989); State v. White, 160 Ariz. 24, 32-33, 770 P.2d 328, 336-37 (1989).

(6) A substantial risk of harm to the persons involved or to the law enforcement process if police must wait for a warrant.[9]

Appellee argues that Officer Boubelik was in "hot pursuit" of Appellant, and Appellant appropriately argues that the hot pursuit doctrine applies only to felonies. The State's argument that Appellant had committed a felony flight charge (in violation of A.R.S. Section 28-622.01) is not tenable as Officer Boubelik turned on his red flashing lights only as Appellant's car quickly pulled into the garage. There is simply no evidence of flight, much less a felony flight. Appellee also argues that Appellant was attempting to flee. This Court rejects that contention as not supported by the evidence. Appellant was just opening the door to his automobile as the officer ran up and arrested him. If anything, Appellant had stopped his car and stopped the pursuit. Appellant made no attempts to escape from the officer. After considering the other circumstances that would justify a conclusion that "exigent circumstances" existed, this Court finds that the trial court's conclusions are not supported by the record in any manner. Simply put, there were no exigent circumstances present in this case.

However, this Court concludes that though the trial court erred in its finding of exigent circumstances, the trial court correctly denied Appellant's Motion to Suppress for the reason that Appellant failed to demonstrate a reasonable expectation of privacy within his open garage. The record in this case is devoid of any evidence that Appellant possessed a reasonable expectation of privacy in this open garage. Appellant did not testify; Officer Boubelik was the only witness. The evidence is clear from Officer Boubelik's testimony that the garage door was open facing the driveway, and facing him as he approached the open garage. The garage door was never closed. Counsel for Appellant and the trial judge have mistakenly assumed that a garage attached to a dwelling is always, under all facts and circumstances, including situations where the garage door is opened, to be considered part of the dwelling or home, and always entitled to Fourth Amendment protection. This Court is unwilling to make such a finding and conclude that in a case involving facts such as these, that an open garage is entitled to Fourth Amendment protection with no other evidence of an expectation of privacy.

The Fourth Amendment to the United States Constitution protects individuals from "unreasonable searches and seizures." Searches and seizures inside a home without a warrant are presumptively unreasonable.[10] Additionally, the Arizona Constitution in Article II, Section 8, protects the home from official intrusion without lawful authority.[11]

The question, then, is whether a garage is part of a home or dwelling. Arizona courts have found that a garage is part of a "private home" within the meaning of A.R.S. Section 13-

[9] Id.
[10] Payton v. New York, 445 U.S. 573, 585-86, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980), as cited in State v. Canez, 202 Ariz. 133, 151, 42 P.3d 564, 582 (2002).
[11] State v. Canez, Id.

1204(A)(3), that is to determine if an assault occurred in a "private home."[12] And, Arizona courts have construed the term "residential structure" within the meaning of Arizona's burglary statutes[13] to include a garage.[14] However, the various courts reasonings for construing a garage to be part of a private home or residential structure are not relevant for determining whether an individual has a reasonable expectation of privacy of ones' dwelling or home. Significantly, neither counsel has cited to this court an Arizona case as authority for the proposition that an open garage is part of a residence or home for Fourth Amendment purposes.

This Court must conclude that in the absence of any evidence that Appellant possessed a reasonable expectation of privacy in his open garage, the trial judge erred in assuming such an expectation of privacy existed. Certainly, cases where a garage is closed and a police officer entered through the door without a warrant, then an opposite conclusion could be warranted. It appears that the determination of whether a garage is part of a dwelling should be made on a case by case basis and that numerous facts would be relevant, including whether the garage door was open, whether there was anything stored in the garage, the purpose for which the garage was used, etc. However, based upon the facts of this case, this Court concludes the trial court erred in finding that Appellant possessed a reasonable expectation of privacy in his open garage.

This Court finds that the trial court's determination in denying Appellant's Motion to Suppress was correct, but for different reasons than those stated by the trial judge.

IT IS ORDERED affirming the judgments of guilt and sentences imposed by the Mesa City Court.

IT IS FURTHER ORDERED remanding this matter back to the Mesa City Court for all further and future proceedings in this case.

/ s / HONORABLE MICHAEL D. JONES

JUDICIAL OFFICER OF THE SUPERIOR COURT

[12] State v. Browning, 175 Ariz. 236, 854 P.2d 1222 (App. 1993).
[13] See A.R.S. Section 13-1506, 13-1507, and 13-1508.
[14] State v. Gardella, 156 Ariz. 340, 342, 751 P.2d 1000, 1002 (App. 1988).